

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
(Charlottesville Division)**

STEWART TITLE GUARANTY
COMPANY,

*

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Plaintiff,

*

Case No: Case No.: 3:18cv00058-NKM

v.

*

CLOSURE TITLE & SETTLEMENT
COMPANY LLC,

*

*

Defendant.

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* * * * *

MOTION FOR LEAVE TO FILE SURREPLY

Plaintiff Stewart Title Guaranty Company (“Stewart Title”), by counsel, moves for leave to file a surreply to the reply filed by Defendant Closure Title & Settlement Company, LLC (“Closure Title”) to Stewart Title’s opposition to Closure Title’s Motion to Dismiss [ECF Docket No. 6], in response to new arguments and factual claims made by Closure Title in its Reply to Opposition to Motion to Dismiss [ECF Docket No. 17]. In the reply, Closure Title asserts for the first time claims and argument which purport to support a defense under the voluntary payment doctrine. These arguments and claims did not appear in the Closure Title’s previous brief, and thus Stewart Title has not had an opportunity to respond.

“The standard for granting a leave to file a surreply is whether the party making the motion would be unable to contest matters presented to the court for the first time in the opposing party's reply.” *Lewis v. Rumsfeld*, 154 F. Supp. 2d 56, 61 (D.D.C. 2001). In this case, Closure Title asserts a new defense in its reply, namely the Voluntary Payment Doctrine as applied

in the case of *D. R. Horton, Inc. v. Bd. Of Supervisors for Warren County*, 285 Va. 467, 475 (2013).

Neither this defense nor the *D.R. Horton* case was asserted in the Motion to Dismiss.

Stewart Title has attached a brief Surreply which addresses only these new arguments raised by Closure Title.

For these reasons, Stewart Title respectfully requests leave to file the attached Surreply. Counsel for both parties have met and conferred on this matter; counsel for the Defendant consents to this motion.

Dated: September 11, 2018

STEWART TITLE GUARANTY COMPANY

/s/ Justin P. Fasano

Craig M. Palik (VSB # 45728)

Justin P. Fasano (VSB # 75983)

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of September, 2018 the foregoing was served electronically to:

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/s/ Justin P. Fasano

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